



## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On March 20, 2015 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped and fell while crossing a lawn and sustained an injury to his right knee while in the performance of duty.<sup>3</sup> On March 18, 2016 OWCP accepted the claim for sprain of anterior cruciate ligament of the right knee, initial encounter.

OWCP subsequently received claims for compensation (Form CA-7) for wage-loss commencing May 7, 2015.

In a development letter dated May 6, 2016, OWCP advised appellant that additional evidence was needed with regard to his claims for compensation. It advised him of the type of evidence needed to and afforded him 30 days to submit the requested evidence.

In a May 31, 2016 report, Dr. Steven B. Shamash, a Board-certified orthopedic surgeon, noted that he initially treated appellant on March 24, 2015. He explained that, at that time, the history of the presenting illness was stated incorrectly. Dr. Shamash indicated that, while appellant sustained an injury to the right knee, there was an actual fall, when appellant slipped on wet grass, twisting the knee. He explained that, as stated in his original note, appellant was able to stand up. Dr. Shamash advised that if the information presented to him at that time was factually correct, "based on the mechanism of injury, where there was a slip, twisting injury to the knee and subsequent fall, the physical examination in addition to [appellant's] seeking treatment initially at the emergency room, his knee injury and subsequent treatment are causally related to [the] reported accident of March 20, 2015."

In a June 23, 2016 decision, OWCP denied appellant's claims for compensation for the period May 20 to July 28, 2015.

On July 5, 2016 appellant, through counsel, requested reconsideration. Counsel argued that OWCP should also accept the case for a torn meniscus and retroactively authorize the right knee surgery to repair the tear, which was performed by Dr. Vincent K. McInerney, a Board-certified orthopedic surgeon, on September 30, 2015. He included an x-ray dated November 24, 2015 and an office note from September 1, 2015, the surgical report from September 30, 2015 and Dr. McInerney's treatment notes from November 24, 2015 and January 5, 2016. Counsel argued that Dr. Shamash indicated that appellant had a torn meniscus from the incident and it was confirmed by Dr. McInerney.

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<sup>3</sup> OWCP received the first page of an authorization for examination and/or treatment form (Form CA-16) authorizing appellant's medical treatment for his right knee.

By decision dated October 3, 2016, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that the evidence submitted was insufficient to warrant a merit review.

On June 19, 2017 appellant, through counsel, requested reconsideration. Counsel argued that OWCP issued a decision on June 23, 2016 denying payment for the period May 7 to July 24, 2015. He argued that the Branch of Hearings and Review directed OWCP to accept the case for a knee sprain, which OWCP accepted for a sprain of the ACL on March 18, 2016. Counsel explained that subsequent evidence documented a torn meniscus. He argued that the June 23, 2016 decision referred to Dr. Shamash's note of May 31, 2016 and indicated that it clarified the history of the injury as well as causal relationship. Counsel also referred to the April 28, 2015 magnetic resonance imaging scan and argued that it clarified that there was a tear of the medial meniscus as well as a nondisplaced subchondral impaction injury to the medial femoral condyle. He also argued that he had specifically requested on July 5, 2016 that OWCP approve the case for a torn meniscus and retroactively authorize the right knee surgery performed by Dr. McInerney on September 30, 2015. Counsel reiterated that both Dr. Shamash and Dr. McInerney confirmed a torn meniscus. He also reiterated that OWCP in its June 23, 2016 decision relied upon the fact that Dr. Shamash provided a May 6, 2015 report which indicated that appellant was released to sedentary duty. Counsel explained that there was no sedentary duty for a letter carrier, particularly when his claim was denied. He noted that the claim was not approved until March 18, 2016.

By decision dated September 20, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant review of its prior decision.

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup>

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<sup>4</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In the June 19, 2017 request for reconsideration, counsel argued that the medical evidence supported the expansion of appellant's claim for a torn meniscus. He noted that he had made requests for OWCP to approve the case for a torn meniscus and retroactively authorize the right knee surgery performed by Dr. McInerney on September 30, 2015. Counsel reiterated that both Dr. Shamash and Dr. McInerney confirmed a torn meniscus.

The Board finds that appellant's request for reconsideration did not allege that OWCP erroneously applied or interpreted a specific point of law. The Board further finds that the request for reconsideration did not advance a relevant legal argument not previously considered by OWCP. The underlying issue in this case is whether appellant has established total disability from work from May 20 to July 28, 2015 causally related to his accepted right knee sprain. As counsel's arguments on reconsideration pertain to expansion of the claim, they are irrelevant to the underlying issue and are, therefore, insufficient to warrant further merit review. The Board thus finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).<sup>9</sup>

Appellant did not submit additional evidence with his June 19, 2017 request for reconsideration. Therefore, appellant is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).<sup>10</sup>

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<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *Id.* at § 10.606(b)(3) (i) and (ii).

<sup>10</sup> *Id.* at § 10.606(b)(3) (iii).

As appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).<sup>11</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> The Board notes that record contains a Form CA-16 signed by an employing establishment official. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).